

ISA A. RASMUSSEN, ESQ.
Nevada Bar No. 007491
California Bar No. 207026
LAW OFFICE OF LISA RASMUSSEN, ESQ.
616 South 8th Street
Las Vegas, NV 89101
Tel. (702) 471-6565
Fax. (702) 471-6540
Lisa@LRasmussenLaw.com

Local counsel for certain direct lenders and
Lender 2 Lender, LPG and FDH

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In Re:

USA COMMERCIAL MORTGAGE
COMPANY,
Debtor,

3685 San Fernando Lenders, LLC, et al,

Plaintiffs

v.

Compass USA SPE LLC, et al,

Defendants.

2:07-cv-0892 RCJ (GWF) Base Case;
03:07-cv-241 RCJ (GWF)

STATUS REPORT TO THE COURT
RE: DEFENDANT BORIS PISKUN

The undersigned, local counsel for several direct lenders and FDH Resolution Company, LLC, the Lenders Protection Group, and Lender2Lender, LLC, appeared before this Court on January 5, 2010. At that time, this Court heard various motions, including: (I) Certain Direct Lenders' request to withdraw the reference in Asset Resolution, LLC's pending bankruptcy case; (ii) the request of Plaintiffs herein for entry of default as to Compass Partners, LLC and Compass USA SPE, LLC (collectively, "Compass"), Boris

Status Report

1 Piskun, and David Blatt; and (iii) Mr. Piskun's request for relief from default. ¹

2 This Court inquired whether there had been any agreements between prior counsel for
3 Messrs. Piskun and Blatt² and for Plaintiffs³ that would have obviated the need for Messrs.
4 Piskun or Blatt to file an Answer to the Second Amended Complaint. This Court also made
5 inquiry as to the timing of certain motions, for example, the date that Messrs. Piskun and
6 Blatt filed their Motion to Dismiss the First Amended Complaint and whether that was
7 impacted by the filing of the Second Amended Complaint.

8 Pursuant to the Court's request, the undersigned hereby provides the following
9 summary of relevant events:

10 1. The Original Complaint was filed in May 2007 in case number 03:07-cv-241,
11 which has since been consolidated into the above-captioned matter.

12 2. A First Amended Complaint naming Messrs. Piskun and Blatt as defendants
13 was filed by Plaintiffs in September 2007 in the "241" case.

14 3. On December 13, 2007, Messrs. Piskun and Blatt, through counsel, filed a
15 Motion to Dismiss the Ninth Claim for Relief in the First Amended Complaint. That claim
16 alleged that they were engaging in a civil conspiracy. (C.R. #267.)

17 4. Plaintiffs filed a Response on December 16, 2007 (C.R. #277), and Messrs.
18 Piskun and Blatt, through counsel, filed their Reply on January 9, 2008 (C.R. #290).

19 5. On January 22, 2008, the parties filed a stipulation agreeing to a "standstill"
20 whereby no party would proceed with the litigation and the parties would pursue mediation

21 ¹ Mr. Piskun essentially filed a letter with this Court asking that he not be defaulted, which this
22 Court construed as a motion to vacate the default. Although the request was made on behalf of both
23 Messrs. Piskun and Blatt, this Court made it clear that Mr. Piskun, a non-lawyer, cannot represent or
24 appear on behalf of Mr. Blatt in these proceedings. Nonetheless, the information set forth herein
relates to both Messrs. Piskun and Blatt.

25 ² Messrs. Piskun and Blatt, as well as Compass, were represented by Milbank, Tweed, Hadley and
26 McCloy, LLP ("Milbank Tweed"), with Bullivant Houser Bailey, PC ("Bullivant"), serving as their
local counsel.

27 ³ Plaintiffs were previously organized as LLCs and were represented by Fulbright & Jaworski, LLP.
28 Fulbright & Jaworski sought permission to withdraw from representing the LLCs in May 2008.
This Court denied the Motion at that time and instead asked Fulbright & Jaworski to work with the
Receiver. Fulbright & Jaworski then purportedly represented the Receiver, Tom Grimmett, from
approximately June 2008 until January or February 2009.

1 and the possibility of settlement. (C.R. #313.) The stipulation specifically stated that the
2 standstill agreement would be in effect until March 3, 2008. (Id.) This Court entered an
3 order on the stipulation on January 28, 2008. (C.R. #323.) The stipulation was extended by
4 the consent of the parties until approximately March 17, 2008, but it does not appear that
5 there is any order on file to reflect the extension agreement. ⁴

6 6. On February 7, 2008, Plaintiffs filed their Second Amended Complaint, which
7 also named Messrs. Piskun and Blatt as defendants. (C.R. #364.) The certificate of service
8 indicates that all counsel were served with the Second Amended Complaint via CM/ECF on
9 the same date, February 7, 2008. (Id.) At that time, Messrs. Piskun and Blatt were still
10 represented by counsel – both Milbank Tweed and Bullivant.

11 7. On February 25, 2008, Silar Advisors, LP and Silar Special Opportunities
12 Fund, LP (collectively. “Silar”) filed a Motion to Strike the Second Amended Complaint
13 (C.R.#415), but neither Compass nor Messrs. Piskun or Blatt filed any such motion.

14 8. Compass and Messrs. Piskun and Blatt continued to file motions after the
15 expiration of the standstill agreement in mid-March, 2008. For example, on April 11, 2008,
16 Compass filed a Motion for an Order of Contempt for Violation of Orders of the Bankruptcy
17 Court and the District Court. (C.R. #473.) The Motion was accompanied by a Declaration
18 executed by Mr. Piskun. (C.R. #474.) Additionally, on May 14, 2008, Compass filed a
19 Motion for Augmented Courthouse Security for the June 2, 2008 hearing. (C.R. #511.)
20 That Motion was also accompanied by a Declaration executed by Mr. Piskun. (Id.)

21 9. On June 2, 2008, this Court denied Silar’s Motion to Strike the Second
22 Amended Complaint. (C.R. #582.) This Court also authorized the standstill agreement to
23 be reinstituted from that date until June 25, 2008, the date of the next hearing. (Id.)

24 10. On June 12, 2008, the parties filed another stipulation (C.R. #577) agreeing to
25 a standstill between that date, June 12, 2008, and the next hearing date, June 25, 2008. (Id.)
26 That agreement contemplated that the parties would not take any further action between June
27 12 and June 25, 2008. (Id.)

28

⁴ The extension is referenced in subsequent pleadings.

1 11. On June 25, 2008, the parties appeared before this Court, which agreed to
2 schedule a two-week hearing on the termination of Compass's servicing rights from August
3 12, 2008, through August 25, 2008. (C.R. #604.) This Court also stated that the standstill
4 agreement in effect would be extended through the conclusion of the termination hearing on
5 or about August 25, 2008. (Id.)

6 12. The parties each submitted orders to reflect their understanding of the end date
7 for the standstill agreement. Counsel for Messrs. Piskun and Blatt submitted a proposed
8 order extending the standstill agreement to September 3, 2008. (C.R. #628, filed on July 16,
9 2008.)

10 13. A hearing was held on August 11, 2008, at which time the issue of termination
11 was tabled because the Receiver was proposing to file a third amended class action
12 complaint. This Court requested additional analysis and authorized the filing of a third
13 amended complaint. (C.R. #694.) The hearing on the termination issue was vacated. (Id.)

14 14. On October 7, 2008, Silar filed a status report with the Court explaining that it
15 had foreclosed on Compass's rights in September 2008. (C.R. #704.)

16 15. On October 10, 2008, Milbank Tweed filed a motion to withdraw from
17 representing Compass and Messrs. Piskun and Blatt. (C.R. #709.) Another similar motion
18 was filed again on October 17, 2008. (C.R. #714.) A similar motion was also filed by local
19 counsel, Bullivant, on November 14, 2008. (C.R. #730.) No responses or oppositions were
20 filed.

21 16. This Court held a hearing on December 8, 2008, regarding the motions to
22 withdraw, which were granted. (C.R. #737.)

23 17. Orders granting the motions to withdraw were entered on January 5, 2009.
24 Notices of Entry of the Orders were filed on January 7, 2009. The Notices indicate that
25 service was made on all parties on the CM/ECF filing system and that notice was also made
26 by direct email to "Ron" at Compass at the following address: ron@compass-partners.net;
27 and to Len Mezei at the following address: lmezei@EGPS.com. (C.R. #s 753, 754.)

28 18. On January 14, 2009, this Court filed an Order regarding trial, and the trial

1 date at that time was scheduled for January 27, 2009. (C.R. #764.) On January 20, 2009,
2 this Court held a hearing and rescheduled the trial date for October 2009.

3 19. The undersigned has not located anything in her review of the record that
4 indicates that a standstill agreement was in place beyond August 11, 2008, when this Court
5 vacated the termination hearing so the Receiver could attempt to obtain a settlement and/or
6 to move the Court to allow a class action suit to be filed as the third amended complaint.

7 20. The Receiver, Mr. Grimmett, utilized a website that was available to all parties
8 to check on the status of filings. Upon information and belief, that website was established
9 in the summer of 2008 and continued through at least March 2009.

10 Based on the foregoing, this Court properly dismissed Messrs. Piskun and Blatt's
11 Motion to Dismiss the First Amended Complaint as to them because the filing of the Second
12 Amended Complaint rendered that Motion moot. In addition, the Second Amended
13 Complaint was filed in February 2008, during which time Messrs. Piskun and Blatt were
14 represented by counsel. There was also no known agreement between counsel for Messrs.
15 Piskun and Blatt and counsel for Plaintiffs for an indefinite extension of time for Messrs.
16 Piskun and Blatt to file an Answer or otherwise respond to the Second Amended Complaint.
17 In fact, during the time that there was no standstill agreement in effect, Mr. Piskun submitted
18 several declarations in support of various motions filed by Milbank Tweed and Bullivant.

19 _____Respectfully submitted and dated this 13th day of January, 2010.

20 _____**LAW OFFICE OF LISA RASMUSSEN,**

21 _____*/s/ Lisa A. Rasmussen*

22 _____
23 **LISA A. RASMUSSEN, ESQ.**
24 **Nevada Bar No. 7491**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **STATUS REPORT TO THE COURT RE: DEFENDANT BORIS PISKUN AND DAVID BLATT**, of the parties identified herein was served via CM/ECF to all participants in the electronic filing system on January 13, 2010, and, as indicated below, via electronic and US Mail, on the same date, upon the following parties:

Boris Piskun
12 S Mountain Ave., Apt. 10
Montclair, NJ 07042-1750
bizo34@gmail.com

David Blatt
387 Grand Street, Apt. K 1401
New York, New York 10002

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.